

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

<b>JOSE ANTONIO RAMOS,</b>	:	<b>CIVIL NO. 1:10-CV-1533</b>
Plaintiff	:	( <b>Judge Rambo</b> )
v.	:	( <b>Magistrate Judge Smyser</b> )
<b>JEFFREY A. BEARD, et al.,</b>	:	
Defendants	:	

**M E M O R A N D U M**

Before the court is a report of the magistrate judge to whom this matter was referred in which he recommends that the certain claims in the amended complaint be dismissed. Plaintiff has filed objections to the report and recommendation. The objections amount to a disagreement with the magistrate judge's report and do not offer any countervailing argument or case law that indicates the disposition recommended by the magistrate judge is in error.

Plaintiff does cite case law to dispute the magistrate judge's finding that Defendant Walters did not violate Plaintiff's Eighth Amendment right to be free of the use of excessive force. Plaintiff alleges Walters caused him pain by tightening his handcuffs.

Plaintiff cites to *Hudson v. McMillan*, 503 U.S. 1 (1952), for the proposition that the use of excessive force against a prisoner may constitute cruel and unusual punishment even though the prisoner does not suffer serious injury. The standard in determining whether contemporary standards of decency have been violated is whether prison officials maliciously and sadistically used force to cause harm. *Id.* at 9. The court further held that “[t]he Eighth Amendment’s prohibition of

“cruel and unusual” punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force is not of a sort “repugnant to the conscience of mankind.” *Id.* at 10 (citations omitted).

Petitioner has not met his burden to show that the tight handcuffs, which left indentations on his wrist, was done sadistically and maliciously or that he suffered more than *de minimis* harm. An appropriate order will be issued.

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s/Sylvia H. Rambo  
United States District Judge

Dated: October 6, 2010.

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<b>JEFFREY A. BEARD, <i>et al.</i>,</b>	:	
Defendants	:	

**O R D E R**

In accordance with the accompanying memorandum of law, **IT IS  
HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Smyser.
- 2) The following claims in the amended complaint are dismissed:
  - a) the due process liberty deprivation claim against Defendant McKeown based on conduct of disciplinary hearings;
  - b) the due process property deprivation claim against Defendant Mosier;
  - c) the Eighth Amendment use of force claim against Defendant Walters;
  - d) the Eighth Amendment medical care claims against all Defendants; and
  - e) the claim against Defendant Mosier based on his handling of Plaintiff's grievances.
- 3) Plaintiff's motion for a temporary restraining order or a preliminary injunction is denied.

4) This case is remanded to the magistrate judge for further proceedings.

s/Sylvia H. Rambo  
United States District Judge

Dated: October 6, 2010.